

COMMERCIAL EXHIBITOR APPLICATION/AGREEMENT

Arapahoe County Fair (July 20 - 24, 2011)
 Arapahoe County Fairgrounds and Regional Park, 25690 East Quincy Avenue, Aurora, CO 80016
 www.arapahoecountyfair.com | 303-795-4955 | Fax: 303-766-0487

Application Deadline: June 4, 2011

BUSINESS/COMPANY (the "Exhibitor"): _____
 (Circle one) Sole Proprietor Partnership Corporation Arapahoe County Department

CONTACT PERSON: _____

MAILING ADDRESS (CITY, STATE, ZIP): _____

CELL PHONE: _____ **PHONE:** _____ **FAX:** _____ **EMAIL:** _____

FEDERAL ID# and/or SOCIAL SECURITY #: _____

ELECTRICITY: VOLTAGE: _____ **AMPS:** _____ **PHASE:** _____ **# OF OUTLETS:** _____

Does anyone in Arapahoe County have financial interest in your business? Yes, please explain: _____
 No.

APPLICATION PACKET:

Exhibitor is required to submit the following materials: **ONLY COMPLETE APPLICATION PACKETS WILL BE CONSIDERED.**

1. Completed and executed Application/Agreement.
2. Deposit of 50% of the total booth space fee detailed below. Make check or money order payable to: Arapahoe County.
3. Photo of booth (photo will not be returned).
4. Complete list of items Exhibitor plans to sell.
5. Certificate of Insurance. Must name "Arapahoe County" as Additional Insured. (Please note if Exhibitor will be purchasing insurance through Arapahoe County.)
6. Copy of Sales Tax License.

APPLICANT APPROVAL AND SELECTION:

Approval and selection of exhibitors will depend on product type, quality and pricing, exhibitor staff cleanliness, appearance, public treatment, and exhibitor history. Arapahoe County reserves the right to deny rental of a commercial booth space. Previous participation in the Arapahoe County Fair does not guarantee an exhibitor priority treatment. In order to maintain product balance, and as a means of encouraging new products, it sometimes becomes necessary to deny booth space requests when too many exhibitors wish to exhibit or sell the same or related products. Applicants also may be denied due to specific location and/or physical requirements, space availability, or late application packet receipt. Selection of any application does not imply endorsement by the Arapahoe County Fair of the Exhibitor's products or services. Successful exhibitors will be notified by email or U.S. Mail. Balance of the booth space fee amount is due no later than June 30, 2011. Failure to make full payment of the booth space fee by this date will result in booth assigned on an "as available" basis and may result in forfeiture of booth space and any monies paid. Booth spaces will be assigned on July 20, 2011.

COMMERCIAL EXHIBITOR BOOTH RATE INFORMATION AND FEES: ALL BOOTHS ARE OUTDOORS.

Quantity	Size	Includes	Fee	Total
	10 x 10	Booth Space – Includes one 110 outlet and 2 Exhibitor badges. Additional Exhibitor day passes may be purchased at gate (\$5 each).	\$275	
		Corner Booth Space – Limited Quantity (additional cost)	\$50	
	10 x 10	Commercial tent rental – Includes set up and return	\$200	
		Insurance through Arapahoe County	\$88	
		Additional Exhibitor Passes at \$5 each	\$5	
		Participation in Barnyard Bingo. Number of participants is limited. See flyer for additional information.	\$25	
			Booth Space Fee Total:	

I have read and agree to all contractual provisions as set forth in this Commercial Exhibitor Application/Agreement.

 Exhibitor Signature

 Date Signed

Internal Use Only

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CONTRACTUAL PROVISIONS

WHEREAS, Board of County Commissioners of the County of Arapahoe, State of Colorado, whose address is 5334 South Prince Street, Littleton, Colorado 80166 and the Arapahoe County Fairgrounds and Regional Park (hereinafter referred to as the "County") are holding the 2011 Arapahoe County Fair on Wednesday, July 20 through Sunday, July 24, 2011 (the "Arapahoe County Fair"); and

WHEREAS, Exhibitor desires to rent booth space at the Arapahoe County Fair; and

WHEREAS, Exhibitor has provided a complete application packet including an executed Commercial Exhibitor Application/Agreement (the "Application/Agreement") to the County; and

WHEREAS, in the event that the County approves and selects the Exhibitor, the Exhibitor agrees to the contractual terms of this Application/Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Application Packet.** Exhibitor is required to submit the following materials to the County:
 - a. Completed and executed Application/Agreement.
 - b. Deposit of 50% of the total booth space fee detailed above. Make check or money order payable to: Arapahoe County.
 - c. Photo of booth (photo will not be returned).
 - d. Complete list of items Exhibitor plans to sell.
 - e. Certificate of Insurance. (Please note if Exhibitor will be purchasing insurance through Arapahoe County.)
 - f. Copy of Sales Tax License.

2. **Exhibitor Approval and Selection.** Approval and selection of exhibitors will depend on product type, quality and pricing, exhibitor staff cleanliness, appearance, public treatment, and exhibitor history. The County reserves the right to deny rental of a commercial booth space. Previous participation in the Arapahoe County Fair does not guarantee Exhibitor priority treatment. In order to maintain product balance, and as a means of encouraging new products, it sometimes becomes necessary to deny booth space requests when too many exhibitors wish to exhibit or sell the same or related products. Applicants also may be denied due to specific location and/or physical requirements, space availability, or late application packet receipt. Selection of Exhibitor's application does not imply endorsement by the Arapahoe County Fair of the Exhibitor's products or services. Successful exhibitors will be notified by email or U.S. Mail.

3. **Booth Space Fees.** Balance of the booth space fee amount is due no later than June 30, 2011. Failure to make full payment of the booth space fee by this date will result in booth space assigned on an "as available" basis and may result in forfeiture of booth space and any monies paid. NO BOOTH ASSIGNMENT will be made until full payment is received by the County.

4. **Cancellation and Termination.** In the event of cancellation for any reason, monies paid shall be refunded only if the County is able to resell the booth space. If the County is unable to resell the booth space, then no monies shall be refunded. Cancellations MUST be received no later than thirty (30) days prior to July 20, 2011, or deposits may be forfeited. Refunds, if any, will be mailed within thirty (30) days after the Arapahoe County Fair. County shall also have the right to immediately terminate this Application/Agreement for cause, by providing written notice to Exhibitor, should Exhibitor fail to fulfill, in a timely and proper manner, its obligations, covenants or stipulations pursuant to this Application/Agreement.

5. **Sales Tax Licenses.** The State of Colorado Department of Revenue requires the Exhibitor to have a sale tax license. All product sales at the Arapahoe County Fair are subject to the State of Colorado and Arapahoe County sales taxes in the amount of 3.15%: (State of Colorado 2.9% Arapahoe County .25%). Exhibitor is obligated and responsible for the proper collection and submittal of sales tax to the State of Colorado and Arapahoe County. Exhibitors must submit all tax identification numbers with application.

- a. **Special Events Sales Tax Licenses.** Exhibitor may purchase a special events sales tax license from the County for \$8 per event. Exhibitor may purchase a multiple events sales tax license, a two-year license, for \$16, with the cost prorated in 6-month intervals. If Exhibitor has a standard retail or wholesale license and needs to obtain a special events sales tax license there will be no additional cost for the special event sales tax license.

6. **Dates and Hours.** Exhibitor shall be open for business during the Arapahoe County Fair as follows:

Wednesday, July 20 th	3:00 p.m. – 8:30 p.m.
Thursday, July 21 st	4:00 p.m. – 8:30 p.m.
Friday, July 22 nd	11:00 a.m. – 9:00 p.m.
Saturday, July 23 rd	11:00 a.m. – 9:00 p.m.
Sunday, July 24 th	11:00 a.m. – 9:00 p.m.

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7. Location. Booth spaces will be assigned on July 20, 2011. County reserves the right to locate, re-locate, refuse relocation, or cancel any exhibit/display/concession that is not in the best interest of the Arapahoe County Fair or the County. Exhibitors are prohibited from subleasing booth spaces or portions thereof without prior written authorization from the County.

8. Set Up. The Arapahoe County Fair will be open for the Exhibitor to set up its booth space on Tuesday, July 19, 2011, at 8:00 a.m. and will close at 7:00 p.m. Exhibitor must complete set up and be in place by 12:00 p.m. and ready for business by 3:00 p.m. on Wednesday, July 21, 2011. If Exhibitor has not moved in and is not completely operational by 3:00 p.m., the County shall have the right to resell the booth space, and all monies paid by the Exhibitor shall be forfeited. No booth space will be held, nor a refund of deposit given, unless prior arrangements have been made with the County and noted on application.

9. Teardown. All booth spaces must remain totally intact and operational until 9:00 p.m. Sunday, July 24, 2011. Teardown begins Sunday, July 24, 2011 at 9:00 p.m. and lasts until Monday, July 25, 2011 at 8:00 p.m. Safety is critical to the County. If Exhibitor begins teardown during the Arapahoe County Fair, Exhibitor places the visitors at risk. Early teardown may result in denial of future participation in the Arapahoe County Fair.

- a. Tear down must be completed prior to 8:00 p.m. Monday, July 25, 2011, unless cleared by the County. Any articles left on the fairgrounds after this time and date, may be disposed of by the County, and in any manner deemed in the best interest of the County.
- b. When leaving the fairgrounds, all refuse/debris must be cleaned from your booth space and deposited in appropriate receptacles.
- c. No vehicles will be permitted on the fairgrounds for teardown until 9:00 p.m. Sunday, July 24, 2011, or until Arapahoe County Fair Officials deem it safe. Limited security is available; therefore Exhibitors are required to secure their own booth space.

10. Servicing Booth Space. Supplies must be delivered to the Exhibitor's booth space prior to 10:00 a.m. each day. All vehicles must be out of the fenced fairgrounds area by 10:00 a.m. daily.

11. Exhibitor Conduct and Booth Space Appearance. Exhibitor shall conduct the operation of the exhibit, display, or concession in a quiet and orderly manner at all times and shall keep the booth space display area neat, clean, and free from rubbish. Exhibitor is responsible for the appearance, maintenance, and attractive condition of the booth space. Exhibitor is required to keep clean at all times the 5' space immediately surrounding the booth space. Exhibitor is responsible for the proper disposal of all waste products. All garbage and refuse must be secured in plastic bags before depositing in the designated trash containers. Violation of this paragraph may result in loss of booth space and privileges. Violators may be expelled from the fairgrounds. No refund of booth rental will be authorized under such circumstances.

- a. Weather. Exhibitor should make provisions to protect their display from sun, wind, and inclement weather. It is suggested that Exhibitor build the booth space up on raised floors, to avoid water damage should it rain. Exhibitor acknowledges that there is a good possibility of severe wind and weather during the Arapahoe County Fair.
- b. Vendors must conduct all related business within their allotted space. No products, signage, literature shall be presented outside of the designated booth space.
- c. Tents should be made with a durable, fire resistant material. **NO TARPS WILL BE ALLOWED.**
- d. Sidewalk areas around the booth space must be kept open. No products can be displayed on the sidewalk. Sidewalks are not part of the booth space rented.
- e. Booth space should not exceed 15 feet in height unless prior approval is received from the County.
- f. Design of the booth space should be unique and relate to the product exhibited. Showcases should be in good repair, and adequately lighted to highlight the product shown or exhibited. Exhibitor shall provide all furnishings and equipment for the interior of the booth space. Lighting to highlight the overall exhibit is recommended. Exhibit construction shall be professional in appearance, and in good repair.
- g. Exhibitor's staff should be neat, clean, and attentive to customers.
- h. All tables must be skirted or covered to the ground to adequately screen the underneath and rear storage from public view.
- i. If an item is not related to your space's theme or products and does not enhance the appearance of your space or is not for sale, it does not belong in the view of the public. Cardboard boxes, storage containers, novels, and miscellaneous sundries should become part of the "backstage" area, and not part of your booth space decoration. Uncovered cardboard boxes will not be allowed as display platforms for merchandise.
- j. Exhibitor shall maintain all equipment, trailers, stands, booths, or displays in a neat and orderly fashion. Exhibitor shall keep the premises and every part in a clean and wholesome condition- free of any objectionable noises, odors, or nuisances.
- k. Exhibitor is responsible for cleaning his/her own booth space area at the end of each day. Exhibitor is required to place all trash in the trash receptacles. County clean-up personnel will not enter the booth space areas.

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1. All Exhibitor signage shall conform to criteria set by the County. **NO HANDMADE (LETTERED, WRITTEN, OR DRAWN) PAPER SIGNS ARE PERMITTED.** All signage must be professional and proportioned to the booth space size. No signs outside the fairgrounds are permitted. Signage/banners cannot impede the view of other vendors/exhibitors.

12. County Access to Exhibitor Both Space. County and its employees, agents, assigns or volunteers, shall have access to any Exhibitor space/premises at all times, but Exhibitor is responsible for securing personal items and the County is not responsible for lost or stolen items.

13. Electrical & Water. Exhibitor must furnish its own booth setup and electrical cords. All cords must be of approved type (UL) and grounded. Electric service will be provided by the County. Most booth space areas do not have ready access to water. Exhibitor requiring occasional use of water must provide their own hoses, buckets, etc. and shall not allow water to overflow, leak, or drain on the ground or floor. The Arapahoe County Fair reserves the right to disconnect defective or damaged hoses. In the event of disruption in electrical or water service, the County or any of its elected or appointed officials, officers, employees and/or agents shall not be held responsible for any damage, including but not limited to, any food products or equipment.

14. Electrician. The County's electrician will make all service connections. Under no circumstances, shall anyone other than the County's electrician make electrical connections. The County's electrician will be available during business hours to adjust any difficulties with the power systems, but shall not repair or adjust any appliances or equipment. Installation of any new electrical services, or special wiring or line extensions to a structure must be done by a licensed electrician, and shall be at the Exhibitor's sole cost and expense. The County's electrician reserves the right to disconnect service to Exhibitor's booth space that is not safe or wired according to code.

15. Ice. An ice concession will be located at the beer garden on the fairgrounds. **NO OTHER SOURCE FOR ICE IS PERMITTED.**

16. Sewer. No sewer facilities are available in any booth space area. Use of sinks, toilets, and other facilities not fully self-contained are strictly prohibited.

17. L.P. Gas. County will not provide L.P.G. or any other flammable liquids. All L.P.G. installations must comply with all fire codes and standards.

18. Sound Devices. Exhibitor shall obtain permission from the County for use in its exhibit or display all sound devices such as radios, speakers, stereo, and any other attention getting devices. Said authorized use shall not interfere with any other displays or exhibits. The County reserves the right to revoke permission for the use of such sound devices at any time.

19. Promotional Items. Promotional items may be distributed only from designated booth space. No food, beverage or alcoholic beverages may be given away without prior approval of the County and Tri-County Health Department.

20. Parking Permits, & Dry Camping. Exhibitor shall receive one (1) vehicle parking permit with the booth space number and business name on it to permit parking in the exhibitor parking area. Additional vehicle passes may be obtained at \$25.00 each. All vehicles must be parked in the designated exhibitor parking lot by 10:00 a.m. each day the Arapahoe County Fair is in progress. All vehicles must be removed from the designated vendor parking lot by one hour after gate closure each day the Arapahoe County Fair is in progress. No overnight parking is allowed. Any vehicle not removed by the designated time is subject to towing to the general parking lot at the owner's expense. Violation of the delivery times and/or failure to remove vehicles from the parking areas by the designated times may result in suspension of the parking permit. Any authorized vehicle must carry a vehicle parking permit in plain sight at all times when on the fairgrounds. Parking permits will NOT be replaced if lost or stolen.

21. Admission Passes. Exhibitor will receive a specified number of admission passes for each booth space. (See Vendor Handbook) All others, helpers, etc. must furnish their own gate admission. The gatekeepers will not be responsible for holding admission passes.

22. Dry Camping. Exhibitor may dry camp at no charge. Exhibitor shall inquire with the Arapahoe County Fair office if Exhibitor desires dry camping information. No campers (living quarters) will be allowed in the booth spaces without prior approval from the County.

23. Motorized Vehicles. No vehicles are allowed to travel on the fairgrounds at any time during Arapahoe County Fair hours. During set-up, take down, and re-supply times in the morning, anyone driving any type of motorized vehicle onto the fairgrounds must drive at a safe speed and must yield to pedestrian traffic. The speed limit on the fairgrounds is 5 mph at all times. Should an accident happen that could be attributed to the Exhibitor's employees or their operation, Exhibitor will be held liable. The

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use of any self or motor powered vehicle such as ATVs (4-wheelers), bicycles, scooters, skateboards, roller blades or other skates is NOT ALLOWED. Exceptions are made for the mobility impaired, carnival owners and their authorized agents, regulatory agents, approved event staff and police and emergency personnel.

24. Freight. There is no available room on the fairgrounds for Exhibitor storage. Please arrange for any storage needs through local shipping companies. Packages sent to the Exhibitor and not picked up by the end of the Arapahoe County Fair will be returned to the sender at the expense of the Exhibitor. The County does not assume responsibility or liability for any packages or shipments. The County will NOT accept C.O.D. packages.

25. Security. The County will make every effort to provide adequate building and grounds security during the Arapahoe County Fair. Roving grounds personnel provide night security. The County, however, cannot be held responsible for any loss or damage or for injury by or for any cause. Exhibitor must make provisions for the safe guarding of their displays and are urged to insure themselves against property loss or damage, and against the liability for personal injury. Exhibitors need to secure their own property.

26. Smoking. By order of the State Fire Marshall, smoking is prohibited at all times on County facilities.

27. Lost and Found. A lost and found will be located at the Information and Volunteer Check-In box office at the main entrance on the north side of the Main building.

28. Products/Practices Not Allowed. The following are products and practices that are not allowed at the Arapahoe County Fair:

- a. Laser lights, silly string, shocking devices, and drug paraphernalia are not allowed on the fairgrounds.
- b. No Fireworks, exploding devices.
- c. No weapons of any kind are allowed on the fairgrounds at any time.
- d. No alcohol may be brought onto the fairgrounds.
- e. Due to security risk, the sale of the following items is not allowed: swords, hunting knives, pocket knives, firearms or items resembling firearms, noisemakers, and smoke bombs.
- f. No tobacco products can be sold or distributed on the fairgrounds.
- g. Merchandise referring to alcohol abuse, drug use, violence or that is sexually explicit or suggestive in nature.
- h. Policy prohibits Arapahoe County Fair staff from receiving free food, beverages, or gifts. Please do not embarrass the staff by offering gifts or goods at no charge.

29. Independent Contractor. Exhibitor is an independent contractor. AN INDEPENDENT CONTRACTOR IS NOT ENTITLED TO WORKER'S COMPENSATION BENEFITS AND IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED PURSUANT TO THE CONTRACT RELATIONSHIP. Notwithstanding any provision appearing in this Application/Agreement, all personnel assigned by the Exhibitor to perform work under the terms of this Application/Agreement shall be and remain at all times employees of the Exhibitor or employees of their respective employers for all purposes. Nothing in this Application/Agreement shall be construed as creating the relationship of employer or employee between the County and the Exhibitor or any of the Exhibitor's agents or employees.

30. Insurance. Exhibitor agrees to procure and maintain, at its own expense, the following policies of insurance:

- a. Commercial General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) each occurrence and One Million Dollars (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage must be on an "occurrence" basis as opposed to a "claims made" basis. This insurance must pay on behalf of the Exhibitor all sums which the Exhibitor shall become legally obligated to pay as damages because of bodily injury or property damage caused by an occurrence up to the specified limits of liability for each occurrence.
- b. Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than Five Hundred Thousand Dollars (\$500,000) each occurrence with respect to each of Exhibitor's owned, hired and non-owned vehicles assigned to or used in performance of the work. The policy shall contain a severability of interests' provision. Automobile Liability insurance must cover the Exhibitor for all sums, which the Exhibitor shall become legally obligated to pay as damages because of bodily injury or property damage caused by an occurrence up to the specified limits of liability for each occurrence. Such coverage must include all automotive equipment used in the performance of the work associated with the Arapahoe County Fair, both on and off the work site, and must include non-ownership and hired cars coverage. Coverage must extend to any camper (living space) used in conjunction with the Arapahoe County Fair.

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- c. Worker's Compensation insurance with statutory minimums for each accident and each employee for disease to cover obligations imposed by applicable laws for any employee engaged in service with the Exhibitor under this Application/Agreement.
 - i. In the event that Exhibitor is a sole proprietor, Exhibitor hereby certifies that Exhibitor is small independent contractor, and as such, Exhibitor is not required, under Colorado law, to carry worker's compensation insurance on my business or myself. Exhibitor further agrees, to assume all risk of injury of any type and kind, and to hold Arapahoe County, its elected and appointed officials, officers, employees, and agents harmless from any and all liability associated with any injury that Exhibitor may incur as a result of the work pursuant to this Application/Agreement. Further, Exhibitor agrees to be personally responsible for any and all medical bills that Exhibitor may incur as a result of any injury while engaged in the work described in this Application/Agreement.
- d. The policies required above shall be primary insurance, and any insurance carried by Arapahoe County, its officers, or its employees shall be excess and not contributory insurance to that provided by Exhibitor. No additional insured endorsement to the policies required above shall contain any exclusion for bodily injury or property damage arising from completed operations. Exhibitor shall be solely responsible for any deductible losses under any policy required above.
- e. The required Commercial General Liability shall be endorsed to include Arapahoe County as Certificate Holder and name Arapahoe County, and its elected officials, officers, employees and agents as additional insured's. The required Worker's Compensation policies shall be endorsed to include Arapahoe County as Certificate Holder. The policies shall provide that Arapahoe County will receive notice no less than 30 days prior to cancellation, termination or a material change to the policies.
- f. Exhibitor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Application/Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.
- g. Failure on the part of the Exhibitor to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of contract upon which the County may immediately terminate this Application/Agreement.

31. Indemnification and Release of Liability. Exhibitor shall indemnify and hold harmless Arapahoe County and its elected and appointed officials, officers, employees and agents from and against any and all losses, damages, liabilities, claims, suits, or actions, including costs and attorneys fees, incurred or occasioned as a result of the acts or omissions of the Exhibitor, or its principals, employees, agents or contractors, arising out of or in any way connected with: 1) Exhibitor's participation in the Arapahoe County Fair, and/or 2) Exhibitor's use of Arapahoe County property. Further, Exhibitor, on behalf of itself and its principals, employees and agents, shall release Arapahoe County and its elected and appointed officials, officers, employees and agents from any and all liability for damages to person or property arising out of or related in any way to Exhibitor's participation in the Arapahoe County Fair or use of Arapahoe County property. Exhibitor's obligation to indemnify pursuant to this paragraph, shall survive the completion or termination of this Application/Agreement. Nothing in this Agreement or in any actions taken by the County pursuant to this Application/Agreement shall be deemed a waiver of Arapahoe County's sovereign immunity under the Colorado Governmental Immunity Act Colo. Rev. Stat. §§24-10-101 *et seq.*

32. Arapahoe County Fair Rules and Regulations. Exhibitor agrees to adhere to and comply with the Arapahoe County Fair rules and regulations and all other applicable federal, state and local laws, ordinances, regulations and resolutions while in attendance at the Arapahoe County Fair. Failure to comply with the terms of this Application/Agreement, for misconduct, harassment or disrespect of the Health Department officials, Arapahoe County Fair Officials, Security, attendees or fellow exhibitors may result in immediate loss of booth space and privileges at any time and without refund of booth space fees.

33. Changes or Alterations. There will be no change, alteration, variation or deviation from the terms of this Application/Agreement unless made in writing and signed by all parties hereto. No verbal understanding or agreement, past, present, or future not incorporated herein shall be valid or binding on either party. It is further agreed that all representations regarding this Application/Agreement are contained herein and understood by the parties hereto.

34. Force Majeure. Neither the County nor the Exhibitor shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Application/Agreement, nor shall any delay or failure constitute a default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure." As used in this Application/Agreement, "force majeure" means acts of God, acts of the public enemy, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargos, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.